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81-2243

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

RONALD FINCHER,

Petitioner,

-v-

STATE OF GEORGIA,

Respondent.

ON WRIT OF CERTIORARI TO
THE GEORGIA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1981

RONALD FINCHER,	*	
Petitioner,	*	
-v-	*	Case No. _____
STATE OF GEORGIA,	*	
Respondent	*	
	*	

ON WRIT OF CERTIORARI
TO THE GEORGIA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Petitioner Ronald Fincher prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of Georgia, reversing the judgment of the trial court which had sustained petitioner's motion to suppress evidence.

QUESTION PRESENTED

Was the affidavit on which a search warrant for petitioner's premises issued insufficient under Aguilar v. Texas, 378 U.S. 108 (1964) and its progeny?

PARTIES TO THE PROCEEDING

The following persons or entities are parties to the proceedings: Ronald Fincher, petitioner; the State of Georgia, respondent.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT . .	3
CONCLUSION	7

TABLE OF AUTHORITIES

	Page
CASES:	
Aguilar v. Texas, 378 U.S. 108 (1964)	14, 15
Jones v. United States, 362 U.S. 257 (1960)	3
Stone v. Powell, 428 U.S. 465 (1976)	5, 6

No. _____

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RONALD FINCHER,

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-v-

STATE OF GEORGIA,

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Court of Appeals of the State of Georgia, reversing the judgment of the trial court, is reported at _____ Ga. App. _____ (1982) (Appendix A). A petition for the writ of certiorari to the Supreme Court of Georgia was denied without opinion. The judgment of the Superior Court of Clarke County sustaining petitioner's motion to suppress evidence is not reported. (Appendix B).

JURISDICTION

The judgment of the Court of Appeals was rendered on February 23, 1982. A motion for rehearing before the Court of Appeals was denied on March 10, 1982. On April 8, 1982, petitioner's application for the writ of certiorari was denied by the Supreme Court of the State of Georgia. This Court has jurisdiction pursuant to 28 U.S.C. §1257(3).

STATEMENT OF THE CASE

On February 20, 1981, George Garrison, a lieutenant with the Athens (Georgia) Police Department, made application before the Honorable Herbert T. Hutto, judge pro hac vice of the Magistrate's Court of Athens, Clarke County, for the purposes of obtaining a search warrant for the garage apartment where petitioner resided. Judge Hutto issued the requested warrant based solely on the written affidavit which was presented in support of the search warrant application. (Appendix C).

The warrant was executed on February 20, 1981, and resulted in the discovery of a quantity of cocaine, methamphetamines, and marijuana. Petitioner was thereafter indicted for three violations of the Georgia Controlled Substances Act.

Petitioner filed a motion to suppress evidence which was argued before the judge of the Superior Court of Clarke County. The parties stipulated that no evidence was offered to the magistrate other than the written affidavit. Judgment sustaining petitioner's motion to suppress evidence was thereafter entered.

The judgment of the Superior Court of Clarke County was appealed by the State of Georgia to the Court of Appeals which entered a written opinion and judgment, reversing the judgment of the trial court. A timely motion for

rehearing was made and denied in the Court of Appeals of the State of Georgia, and thereafter application for certiorari was made to the Supreme Court of the State of Georgia which denied the petition. A motion to stay the remittitur was granted by the Court of Appeals of the State of Georgia pending the filing of a petition for the writ of certiorari in this Court.

REASONS FOR GRANTING THE WRIT

I.

It has been recognized from the outset that the controlling issue in this case is whether the affidavit in support of the search warrant can be squared with the requirement of the Fourth Amendment to the United States Constitution which mandates that "no Warrants shall issue, but upon probable cause, supported by Oath or Affirmation ..."

While it is unnecessary that the affiant who makes the warrant application have direct, personal knowledge of all matters reflected in the affidavit, it is equally true that there must be "... a substantial basis for crediting the hearsay ... presented." Jones v. United States, 362 U.S. 257, 268 (1960).

While the potential sources of information in an application for a search warrant are almost infinite, the constitutional standard for assessing

the information provided by unnamed informants may be clearly stated:

> "The magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed, was 'credible' or his information 'reliable.'" Aguilar v. Texas, 378 U.S. 108, 114 (1964) (citation omitted).

In this case, the Fourth Amendment question can be even further distilled because in considering the three sources of information in the warrant application, i.e., unnamed informants identified as Sources A and B, and petitioner, there is no quarrel with the conclusion that the reliability of Source A was adequately established. However, it cannot be gainsaid that Source A lacked any direct knowledge concerning the presence of controlled substances on the searched premises because he never went inside; the only information about controlled substances is derived from Source B. This follows from an analysis of the one-page affidavit, the only evidence offered to the magistrate in support of the application for the warrant.

When hearsay statements attributed to Source B are eliminated from consideration, the relevant portion of the affidavit is reduced to the following: (1) Source A went with Source B to the searched premises and waited outside while Source B went in; (2) Source B returned to Source A's vehicle and showed him, Source A, something. The substance is in no way described in the affidavit, nor is there any indication of how Source A or the affiant could possibly identify the substance as cocaine, yet it was on this basis that the warrant issued.

It is also undeniable that Source B's reliability was not addressed in the affidavit either directly or inferentially. It is therefore clear that the magistrate was not informed of any underlying circumstances from which the affiant could conclude that Source B was credible or his information reliable. Because it was only through Source B that it could be established that narcotics were on the searched premises, it follows that the affidavit is insufficient, and that the search warrant cannot be squared with the warrant requirement of the Fourth Amendment as construed by Aguilar v. Texas, supra, and its progeny.

II.

In Stone v. Powell, 428 U.S. 465 (1976), this Court held that where a state has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus

relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial. It was manifest in Stone v. Powell that the Court was not willing to assume that state courts lacked sensitivity to federal constitutional rights, nor that the federal judiciary possessed more expertise than their state counterparts in reserving search and seizure claims. 428 U.S. at 493, n. 35.

Whatever one's views on the adequacy of this Court's certiorari jurisdiction as a means of effectuating Fourth Amendment values which arise in litigation before the state courts, the fact of the matter is that under existing law, it is only in the context of petitions for certiorari that federal courts will be able to entertain such Fourth Amendment claims, at least where there was a full and fair opportunity to litigate such claims. It thus becomes imperative for this Court to provide meaningful review of Fourth Amendment claims arising in the state courts, particularly where on the basis of an extremely limited factual record, a clearly erroneous decision is made.

An examination of the proceedings in this case indicates a stipulation between the parties that no evidence was offered to the magistrate in support of the search warrant other than one very short affidavit. Petitioner was afforded an opportunity of presenting legal arguments

concerning the sufficiency of that affidavit, and thus cannot contend that a full and fair opportunity to litigate the claim was not afforded. Nevertheless, the judgment sustaining the motion to suppress evidence was reversed by the Court of Appeals of the State of Georgia, and that decision was not overturned on certiorari by the Supreme Court of Georgia despite the patent insufficiency of the affidavit.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for writ of certiorari should be granted and the decision below reversed.

Respectfully submitted,

HENRY & MARSHALL
Attorneys for Petitioner

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IN THE SUPERIOR COURT OF CLARKE COUNTY

STATE OF GEORGIA

STATE OF GEORGIA	*	
	*	
vs.	*	Indictment No.
	*	17,032-34
RONALD FINCHER	*	

JUDGMENT SUSTAINING MOTION
TO SUPPRESS EVIDENCE

The motion to suppress evidence filed by the Defendant in the above referred to case coming before the Court for hearing pursuant to notice given, after hearing argument of counsel the following judgment is entered:

It was stipulated at the hearing that no evidence was offered to the Magistrate other than the affidavit attached to the search warrant which is a part of the record in this case.

A properly certified copy of the order entered by the Judge of the Magistrate's Court of Clarke County on December 17, 1980 appointing Herbert T. Hutto as judge pro hac vice of the Magistrate's Court of Clarke County and of his oath of office as such were introduced into evidence, and no evidence in conflict therewith was offered by the Defendant; and the Court finds as a matter of fact and as a matter of law that Herbert T. Hutto was at the time of the issuance of the search warrant a judge authorized to

receive evidence and issue search warrants in Clarke County under the law of the State.

With respect to whether probable cause existed for the issuance of the search warrant, a unique situation is presented involving triple hearsay. The chain of communication by which the information necessary to authorize the issuance of the search warrant reached the Magistrate was as follows: Source A furnished certain information to the affiant; Source B furnished certain information as to what had allegedly transpired at the Defendant's home to Source A; and the Defendant allegedly furnished certain information (the identification of the substance in question as cocaine and the presence at the Defendant's residence of additional cocaine which could be obtained subsequently) to Source B. The Court is thus confronted with "hearsay on hearsay on hearsay." This objection is not fatal to the issuance of the search warrant; but it does require that the reliability of each informant be established by one of the measures recognized by law. See Smith v. State, 136 Ga. App. 17.

The reliability of Source A in this case was adequately established by the affiant's testimony to the magistrate as to his knowledge about Source A and his character and reliability. See Davis v. State, 129 Ga. App. 158(3), and Miller v. State, 155 Ga. App. 399.

The reliability of Source B is sought to be established by the fact that his actions and statements were against his penal interest. The state relies on U.S. v. Harris, 403 U.S. 573, 91 S. Ct. 2075 and Smith v. State, supra. The fallacy in the State's position is that nowhere does it appear in the affidavit that Source B was aware that he was talking to an informer or voluntarily subjecting himself to any penal liability in making the statements allegedly made by Source B to Source A. The essence of the rule permitting the reliability of an unnamed informer to be established by a statement against his penal interest is that he be consciously aware that he is acting against his own self interest in making the statement. Absent such an awareness, the statement ceases to vouch for the credibility of the informer. Neither barroom braggadocio, nor casual conspiracy carry the assurance of credibility which is presented by a solemn admission or confession of participation in the specific criminal conduct under investigation. See U.S. v. Harris, supra.

No effort whatever was made to establish the credibility of the third party, Fincher (the defendant); and yet the entire search warrant rests on his hearsay statements that the substance exhibited by Source B to Source A was in fact cocaine, and on Fincher's statement to Source B that additional cocaine could be secured at the premises in the future.

Because of a failure to adequately establish the reliability of either Source B or of Fincher (both of whose statements were essential to the validity of the search warrant), the motion to suppress evidence is sustained.

Wherefore, it is ordered that on the rendition of the final judgment in this case the State return to the Defendant any items seized in the execution of the search warrant that do not constitute contraband, and that the State is barred in the trial of this case from offering any testimony as to the execution of the search warrant or anything found pursuant thereto.

This June 11, 1981.

/s/ James Barrow
Judge of the
Superior Court
of Clarke County

FEB 23, 1982

62749. THE STATE v. FINCHER. P-189

POPE, Judge.

This is an appeal by the State from the suppression of evidence in a criminal case involving a violation of the Controlled Substances Act. The trial court determined tht the search warrant used in obtaining the evidence was not based upon probable cause because the reliability of an undisclosed source was not adequately shown.

The warrant was issued solely upon the affidavit of a police officer, which stated that he was contacted by an undisclosed informant referred to as Source A. Source A had been known to the officer for three years, was regularly employed, had no criminal record, and had in the past provided reliable information to police. It is undisputed that Source A's reliability was adequately shown by the affidavit. However, Source A's information was based upon his observation of and information received from another undisclsed source. The officer's affidvit stated in pertinent part: "Source A stated that it was contacted by a second source, hereafter referred to as Source B. Source B stated to Source A within 10 days of February 20, 1981 that it could get some cocaine from [certain] premises. Within this 10 days of February 20, 1981, Source A

and Source B went to the [described] premises, Source B went into the above residence and Source B came back to Source A's vehicle and exhibited what was represented to be cocaine by Ronald Fincher [the defendant] to Source A. Source B further stated to Source A it would be able to get more at any time."

The defendant contends the affidavit was insufficient to show the reliability of Source B. "'Where the hearsay of an informer is relied upon, the affidavit must meet two tests: (1) the reasons for the informer's reliability must be furnished and (2) it must either state how the informer obtained the information or the tip must describe the criminal activity in such detail that the magistrate may know it is more than a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation.' [Cit.] The affidavit in the present case gives sufficient reasons to establish the reliability of the first source. [cit.] Further, the affidavit stated how the first source obtained his information." King v. State, 139 Ga. App. 246, 248 (228 SE2d 172(1976). "These rules governing the evaluation of information from the primary unnamed informant govern also evaluation of information from the secondary sources." State v. Henderson, 40 Or. App. 27, 30 (594 P2d 419)(1979).

The affidavit established the fact that Source A received information from Source B to the effect that Source

B could obtain cocaine from a certain location. Source A went with Source B to the location referred to and observed Source B go into the defendant's garage apartment and return to the Source A's car. Source B displayed to Source A what was represented to be cocaine by the occupant of the apartment to Source B. Source A sufficiently verified Source B's story through his direct observations so as to establish a substantial basis for crediting the hearsay of the second source. Just as independent police investigation corroborating an informant's statements buttresses the reliability of that informant, United States v. Brand, 556 F2d 1312 (9) (5th Cir. 1977), cert. den. 434 U. S. 1063 (1977), rehg. den. 435 U. S. 961 (1977), so too can a reliable informant verify his source of information. This verification sufficiently established the reliability of Source B in the present case. It was shown that Source B obtained his information by direct observations. He saw the defendant provide him with cocaine. This information is corroborated by Source's A's observation of Source B entering the apartment nd returning with the alleged cocaine he displayed to Source A. There was sufficient data in the affidavit for the magistrate to determine that Source A was probably truthful when he told that Source B had observed defendant with the controlled substance. State v. Henderson, supra. We hold therefore that the affidavit was sufficient to establish probable

cause and the trial court erred in granting the motion to suppress the evidence so obtained.

Judgment reversed. Quillian, C. J., and McMurray, P. J., concur.

AFFIDAVIT FOR AN ATHENS, CLARKE COUNTY MAGISTRATE'S SEARCH WARRANT FOR THE ENTIRE PREMISE OF 185 HOLMAN AVENUE BEING A GRAY TWO STORY GARAGE APARTMENT WITH GREEN TRIM BEING TO THE REAR OF 181 HOLMAN AVENUE IN THE CUSTODY AND CONTROL OF RONALD FINCHER LOCATED IN ATHENS, CLARKE COUNTY, GEORGIA.

On February 20, 1981 affiant was contacted by a concerned citizen, hereafter referred to as Source A. Source A is believed to be reliable in that it has been known by affiant for over three years. It is regularly employed, concerned about the drug traffic and known to be reliable and truthful. Affiant knows of own personal knowledge Source A has no police record, it has provided information to affiant that when checked it has been proven to be truthful. Source A wishes to remain confidential.

Source A stated that it was contacted by a second source, hereafter referred to as Source B. Source B stated to Source A within 10 days of February 20, 1981 that it could get some cocaine from the above described premises. Within this 10 days of February 20, 1981, Source A and Source B went to the above described premises and Source B came back to Source A's vehicle and exhibited what was represented to be cocaine by Ronald Fincher to Source A. Source B further stated to Source A it would be able to get more at any time. Affiant personally observed the above

APPENDIX C

residence for the physical appearance. A check with local utilities shows Ronald Fincher to reside at the above premises.

For the above reasons affiant has probable cause to believe there is now a quantity of cocaine within the above-described premises.

/s/George A. Garrison
AFFIANT

Sworn to and subscribed before me this 20 day of February 1981.

/s/ Herbert T. Hutto
JUDGE

Supreme Court, U.S.
FILED
CLERK

NO. 81-2243

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

RONALD FINCHER,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE GEORGIA COURT OF APPEALS

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

I.

Whether the affidavit, based on information provided by a reliable informant, is constitutionally sufficient to support the issuance of a search warrant in this case?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	2
REASONS FOR NOT GRANTING THE WRIT	
I. THE GEORGIA COURT OF APPEALS PROPERLY DETERMINED THAT THE AFFIDAVIT ESTABLISHED PROBABLE CAUSE TO AUTHORIZE ISSUANCE OF A SEARCH WARRANT	2
CONCLUSION	7
CERTIFICATE OF SERVICE	8

TABLE OF AUTHORITIES

Cases

Aguilar v. Texas, 378 U.S. 108 (1964)	3, 4
Spinelli v. United States, 393 U.S. 410 (1969)	4, 5
State v. Fincher, 161 Ga. App. ____ S.E.2d ____ (1982)	2
United States v. Carmichael, 489 F.2d 983 (7th Cir. 2973)	6
United States v. Jenkins, 525 F.2d 819 (8th Cir. 1975)	6
United States v. McCoy, 478 F.2d 176 (10th Cir. 1973)	6
United States v. Skramstad, 649 F.2d 1259 (8th Cir. 1981)	6
United States v. Smith, 462 F.2d 456 (8th Cir. 1972)	4, 5, 9
United States v. Ventrusca, 380 U.S. 102 (1965)	6

NO. 81-2243

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

RONALD FINCHER,

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v.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE GEORGIA COURT OF APPEALS

BRIEF FOR RESPONDENT IN OPPOSITION

PART ONE

STATEMENT OF THE CASE

On February 20, 1981, Hubert T. Hutto, Judge, Magistrate's Court of Athens, Clarke County, Georgia, issued a search warrant for Petitioner's residence on the basis of an affidavit executed by Lieutenant George Garrison, of the City of Athens Police Department. As a result of the search, cocaine, methamphetamine and marijuana were discovered at Petitioner's residence.

During the April Term, 1981, Petitioner was indicted for three violations of the Georgia Controlled Substances Act. Petitioner's motion to suppress evidence was granted by the trial court on the basis that the underlying affidavit was insufficient because, although the reliability of the

principal informant (Source A) was established, the trial judge found no basis for establishing Source B's reliability.

The trial court's decision was reversed by the Georgia Court of Appeals; that Court found that "Source A sufficiently verified Source B's story through his direct observation so as to establish a substantial basis for crediting the hearsay of the second source." *State v. Fincher*, 161 Ga. App. 556, 557, ____ S.E.2d ____ (1982).

On April 8, 1982, the Georgia Supreme Court, with all Justices concurring, denied Petitioner's application for certiorari to review the decision of the Georgia Court of Appeals.

PART TWO

SUMMARY OF ARGUMENT

Repondent maintains that the affidavit presented in this case contained credible information which had been related to a law enforcement officer by a reliable informant. The fact that the affidavit contains "hearsay on hearsay" is not dispositive because the information provided, taken as a whole and in light of the underlying circumstances, is reliable.

PART THREE

REASONS FOR NOT GRANTING THE WRIT

I. THE GEORGIA COURT OF APPEALS PROPERLY DETERMINED THAT THE AFFIDAVIT ESTABLISHED PROBABLE CAUSE TO AUTHORIZE ISSUANCE OF A SEARCH WARRANT.

The affidavit underlying the search warrant issued in this matter was executed by Lieutenant Garrison, of the Athens Police Department, who initially stated that

Source A had been known to him for three years, had provided reliable and truthful information on a regular basis and was concerned about the drug traffic problem. Petitioner does not dispute that Source A's reliability was adequately established. *See* Petitioner's Brief, page 4. After enumerating Source A's credentials, the substance of the affidavit was set forth:

> Source A stated that it was contacted by a second source, hereafter referred to as Source B. Source B stated to Source A within ten days of February 20, 1981 that it could get some cocaine from the above-described premises. Within this ten days of February 20, 1981, Source A and Source B went to the above-described premises and Source B came back to Source A's vehicle and exhibited what was represented to be cocaine by Ronald Fincher to Source A. Source B further stated to Source A it would be able to get more at anytime. Affiant personally observed the above residence for the physical appearance. A check with local utilities shows Ronald Fincher to reside at the above premises.
>
> For the above reasons affiant has probable cause to believe there is now a quantity of cocaine within the above-described premises.

Petitioner argues that this affidavit does not satisfy the probable cause requirements of the Fourth Amendment under this Court's decision in *Aguilar v. Texas*, 378 U.S. 108 (1964) and later cases because the magistrate was not informed as to the reliability of Source B or his information.

The well-established test, for assessing the constitutionality of search warrants issued on the basis of affidavits containing hearsay information from informants,

is set forth in *Aguilar v. Texas*, *supra*, 378 U.S. at 114:

> Although an affidavit may be based on hearsay information and need not reflect the direct personal observations of the affiant, *Jones v. United States*, 362 U.S. 257, 4 L.Ed.2d 697, 80 S.Ct. 725, 78 A.L.R. 2d 233, the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed, *See Rugendorf v. United States*, 376 U.S. 528, 11 L.Ed.2d 887, 84 S.Ct. 825, was "credible" or his information "reliable." (Footnote deleted).

In addition, this Court has held that the magistrate's "determination of probable cause should be paid great deference by reviewing courts. *Jones v. United States*, 362 U.S. 257, 270-71." *Spinelli v. United States*, 393 U.S. 410, 419 (1969).

Respondent maintains that the present case is controlled by the Eighth Circuit's decision in *United States v. Smith*, 462 F.2d 456 (8th Cir. 1972), where the Court upheld the sufficiency of an affidavit under facts virtually identical to the present case. The affidavit was executed by a federal agent and read, in pertinent part:

> On May 13, 1971, I interviewed a confidential informant who advised (sic) that within the last two days he went to 678 Concordia, St. Paul, Minnesota with a second individual. The informant previously advised the second individual that the informant wished to buy heroin. The second individual advised that Larry Smith had heroin and cocaine. The second individual went to the second floor of 678 Concordia Avenue. The second individual returned and gave the informant a foil package of heroin. The informant advised that Larry Smith resides on the second floor of

> 678 Concordia. I ran a Narcodal test on the powder which the informant obtained. The test indicated the powder of an opiate derivative. The second individual advised the informant that in addition to heroin, there was cocaine on the second floor.

Respondent maintains the fact that the substance was tested in *United States v. Smith, supra,* is not significant because in the present case Source A, who is regularly employed in drug cases, apparently recognized the substance as cocaine and it is unlikely that Petitioner would have provided a substance other than cocaine when seeking to establish an on-going dealer-buyer relationship with Source B.

In *United States v. Smith, supra,* the Eighth Circuit concluded that the magistrate "need not categorically reject this double hearsay information. Rather, he is called upon to evaluate this information as well as all other information in the affidavit in order to establish whether it can be reasonably inferred 'that the informant had gained his information in a reliable way.' *Spinelli, supra,* 393 U.S. at 417." *United States v. Smith, supra,* 462 F.2d at 459. The court concluded:

> The crucial question here, however, is not as suggested by Appellant, whether affiant can attest to the reliability or credibility of the second individual, but *whether the information furnished by the informant taken as a whole in light of the underlying circumstances, can be said to be reliable.* The affidavit need only establish the *probability* of criminal activity and secreting of evidence on specific premises, not proof beyond a reasonable doubt. (Citations omitted, emphasis added). *Id.* at 460.

This standard, as enunciated in *United States v. Smith, supra,* for evaluating hearsay on hearsay in affidavits has been widely accepted by the federal appellate courts. *See*

United States v. Skramstad, 649 F.2d 1259, 1263 (8th Cir. 1981), *United States v. McCoy*, 478 F.2d 176, 179 (10th Cir. 1973), *United States v. Jenkins*, 525 F.2d 819, 823 (6th Cir. 1975) and *United States v. Carmichael*, 489 F.2d 983, 986 (7th Cir. 1973).

Respondent maintains, as the Georgia Court of Appeals found, that the information provided by Source A "taken as a whole in light of the underlying circumstances" was properly accepted by the magistrate as reliable. Most significant, is that Source A, an undisputedly reliable informant, personally observed Source B enter the premises and return with the contraband. This Court has repeatedly held that such an affidavit must be treated in a "common place and realistic fashion." *United States v. Ventrusca*, 380 U.S. 102, 108 (1965). Evaluating the facts under that standard, it would not be unusual that the informant, known to the officer-affiant, would be unable to personally consummate the drug purchase if the seller is reasonably cautious about the illegality of his business.

Accordingly, the magistrate properly issued a search warrant in this case because the underlying affidavit contained reliable and credible information.

CONCLUSION

Based on the foregoing, Petitioner has failed to present any argument warranting review by this Court. In light of this Court's considerations, under Rule 17, for granting certiorari, this case is neither contradictory to any precedent of this Court nor does it involve any question of law which has not been settled by this Court. Therefore, Respondent respectfully requests that the petition for a writ of certiorari be denied.

Respectfully submitted,

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First Assistant Attorney General

/s/
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CERTIFICATE OF SERVICE

I, JANICE G. HILDENBRAND, a member of the bar of the Supreme Court of the United States and counsel-of-record for the Respondent, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this brief in opposition for the Respondent upon the Petitioner by depositing a copy of the same in the United States Mail with proper address and adequate postage to:

Mr. Andrew H. Marshall
Henry & Marshall
P. O. Box 808
Athens, Georgia 30603
Attorneys for Petitioner

This 15th day of October, 1982.

/s/
JANICE G. HILDENBRAND
Counsel-of-record for Respondent